

**VOLUNTARY CLEANUP CONTRACT
06-5623-NRP**

**IN THE MATTER OF
A PORTION OF THE
FORMER K-MART SHOPPING CENTER, SPARTANBURG COUNTY
and
JSI SPARTANBURG, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and JSI Spartanburg, LLC pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C §§ 9601, et seq., and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200, with respect to a portion of the property located at 115 Garner Road in Spartanburg, South Carolina. This Portion of the Former K-Mart Shopping Center includes 3.525 acres, more or less, and is within a Planned Unit Development (PUD) covering the entire former shopping center. The PUD will consist largely of retail shops, restaurants, medical offices, and a drug store. The PUD is bounded generally by McMillan Drive to the north, Garner Road to the east, Chinquapin Creek and Pine Street beyond (U.S. Highway 176) to the south and industries to the west. The terms and conditions of this Contract shall be consistent with the "Information and Certification" submitted on February 2, 2006, by O. Johnson Small, II, of JSI Spartanburg, LLC, which is incorporated into this Contract and attached as Appendix A.

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, including any amendments, or in the regulations promulgated thereunder.

- A. "JSI" shall mean JSI Spartanburg LLC.
- B. "Bona Fide Prospective Purchaser" shall mean a person, or a tenant

of that person, who acquires ownership of a facility after the date of enactment of the Brownfields Amendments (January 11, 2002), and by a preponderance of the evidence establishes the following:

- a. Disposal of hazardous substances at the facility occurred prior to acquisition;
- b. The person made all appropriate inquiry into previous ownership and uses of the facility in accordance with generally accepted practices and in accordance with the new standards contained in CERCLA Section 101(35)(B);
- c. The person provides all legally required notices with respect to the hazardous substances found at the facility;
- d. The person exercises “appropriate care” with respect to the hazardous substances found at the facility by taking “reasonable steps” to:
 - i. Stop any continuing releases;
 - ii. Prevent any threatened future release;
and
 - iii. Prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance;
- e. The person provides full cooperation and access to the facility to those authorized to conduct response actions;
- f. The person is in compliance with any land use restrictions and does not impede the effectiveness or integrity of any institutional control;
- g. The person complies with any information request or administrative subpoena under CERCLA; and
- h. The person is not potentially liable for response costs at

the facility or “affiliated” with any such person through:

- i. Direct or indirect familial relationship, or
- ii. Any contractual, corporate or financial relationship (excluding relationships created by instruments conveying or financing title or by contracts for sale of goods and services).

- C. “Contract” shall mean this Voluntary Cleanup Contract.
- D. “Department” shall mean the South Carolina Department of Health and Environmental Control.
- E. “Existing Contamination” shall mean any hazardous substances, pollutants or contaminants (as defined herein), present or existing on or under the Site as of the execution date of this Contract.
- F. “Hazardous Substance” means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous

substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

- G. “Non-Responsible Party” shall mean any party which is neither:
- a. A responsible party at the time the voluntary cleanup contract is signed, nor
 - b. A parent, subsidiary of, or successor to a responsible party. Non-Responsible Parties may include lenders, economic development agencies, fiduciaries, trustees, executors, administrators, custodians, and subsequent holders of a security interest.
 - c. “Oversight Costs” shall mean those costs, both direct and indirect, incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract and any future amendments thereto.
- H. “Pollutant or Contaminant” includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; “contaminant” does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA, Section 101, 42 U.S.C. Section 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline

quality or mixtures of natural gas and such synthetic gas.

- I. "Property" shall mean the cleared 3.525 acres, more or less, of the Site. The Property is identified as a portion of Spartanburg County Tax Map No. 7-08-14-076.00, and being more particularly described by metes and bounds on Appendix A attached hereto and incorporated herein by reference, which property is subject to ownership, prospective ownership, or possessory or contractual interest of JSI. Upon acquisition of the property, JSI shall submit to the Department the recordable survey / accurate description of the property with the new tax map number which will be incorporated into this Contract as Appendix B.
- J. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.
- K. "Responsible Party" shall mean:
 - a. The owner and operator of a vessel, as defined in CERCLA Section 101 (28), or a facility;
 - b. Any person who, at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances were disposed of;
 - c. Any person who, by contract, settlement, or otherwise, arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by such a party or entity and containing such hazardous substances; and/or
 - d. Any person who accepts or accepted any hazardous substances for transport to disposal or treatment

facilities, incineration vessels, as defined in CERCLA Section 101 (38), or sites selected by such person from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

- L. "The Site" shall mean the 18.48-acre Former K-Mart Shopping Center located at 115 Garner Road, Spartanburg, South Carolina, and all areas where a contaminant has been released, deposited, stored, disposed of, placed, or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA Section 101 (28).
- M. "Voluntary Cleanup" shall mean a response action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002).
- N. "Work Plan" shall mean the plan for additional response actions to be conducted at the Property as described in Paragraph 5 of this Contract.

2. Based on the information known by and/or provided to the Department, the following findings are asserted for purposes of this Contract:

A. OWNERSHIP of the Property is as follows

- | | |
|-----------------------|--|
| 1/27/2005 - Present: | Garner Road, LLC (Steven G. Harris, Manager and L. Terrell Sovey, Manager) |
| 7/9/1999 - 1/26/2005: | Chinquapin Creek LLC (Arthur F. Cleveland, II, Manager) |
| 8/22/1988 - 7/8/1999: | Floyd C. Cecil (Floyd C. Cecil died in 1999 and Gail Cecil Ballard and Phillip Schuyler Cecil, III were appointed as the Personal Representatives of his Estate 99ES4200219), Gail Cecil Ballard, Janet Cecil Anderson, Betsy Cecil Sill, Phillip Schuyler Cecil, III, Victoria Cecil Murray; Martha B. Cecil (Martha B. |

	Cecil died in 1999 and Lou C. Self was appointed as the Personal Representative of her Estate 99ES4200904), and J.P. Cecil, Thurman W. Cecil, Jr., and Constance Lynn Cecil Fraser, Trustees under Irrevocable Trust Agreement with Constance W. Cecil and Thurman W. Cecil dated March 25, 1988.
3/31/1988 – 8/21/1988:	Floyd C. Cecil, Martha B. Cecil, and J.P. Cecil, Thurman W. Cecil, Jr., and Constance Lynn Cecil Fraser, Trustees under Irrevocable Trust Agreement with Constance W. Cecil and Thurman W. Cecil dated March 25, 1988.
9/8/1967 – 3/30/1988:	Floyd C. Cecil, Constance W. Cecil and Martha B. Cecil
4/15/1965 – 9/7/1967:	Cecil's Incorporated
8/31/1965 – 4/14/1965:	Cecil's Incorporated, Edwin A. Beam and Miles A. Beam, Jr.
8/31/1965 - 8/31/1965	Fred D. Moffitt, Phil Buchheit and Richard E. Tukey
5/16/1959 – 8/30/1965:	The City of Spartanburg
1957- 5/15, 1959:	Cornelius C. Scott, J. Hurlong Scott, Maude E. Scott, Louise S. Davis, Harold R. Scott and Alexine E. Ward Franks
3/6/1939 – 1957:	Mamie E. Scott (Died in 1957 leaving property to children above)

HISTORY

Historical aerial photographs indicate that a landfill underlies the Property. This landfill is reported to have been operated by the City of Spartanburg and predates landfill permitting by the Department. At the time of landfill operations, landfill activities were consistently burn and cover operations. The presence of landfill material is documented to be at depths up to approximately 40 feet. Three separate geotechnical reports have been prepared by S&ME, Inc. (1999, 2001, and 2002) which document the presence of landfill material especially in the southeastern portion of the 18.48 acre Former K-Mart Shopping Center. In

December 2005, the Spero Corporation conducted a geotechnical exploration on the Property in the vicinity of the proposed Food Lion® building. Again, landfill material was encountered to depths up to 40 feet below ground surface.

The Former K-Mart Shopping Center was constructed in the late 1960s and is visible in the 1970 aerial photograph. An automotive service center with several bays was located at the former K-Mart store. Hydraulic lifts were used in the bays during light maintenance activities such as oil changes, anti-freeze changes and brake work. A 1,000-gallon waste oil underground storage tank (UST) was located outside the southwestern corner of the building. There are no records of a release from this UST. The UST was permanently closed by removal. That file has been purged from Department records. The K-Mart closed in 1994. The structures of the shopping center were razed in 2005. The current condition of the Property is a featureless, flat expanse.

ENVIRONMENTAL CONDITION

In January 2006, a *Phase I Environmental Site Assessment* was completed by the Spero Corporation for JSI. This assessment identified two (2) nearby facilities where groundwater is known to be impacted and that could degrade the quality of groundwater beneath the Property. The Former Conoco Store No. 40041 (gas station) was located in the northeastern corner of the Site at McMillan Street and Garner Road. Groundwater at this location has been impacted by petroleum constituents, as discussed in detail below. Arrow Automotive located at 801 Beaumont Avenue is being redeveloped under a Non-Responsible Party Voluntary Cleanup Contract 04-5426. This facility is approximately 1,800 feet north of the Property and groundwater at this location may be hydraulically upgradient of the Property. Groundwater at the Arrow Automotive location has been impacted by chlorinated solvents in

concentrations that exceed their respective maximum contaminant level (MCL) as established by the South Carolina State Primary Drinking Water Regulations, R. 61-58.

This Phase I assessment also stated that solvent use was likely common in the service bays of the former K-Mart and that hydraulic lifts were used in the bays. The presence of landfill material beneath the Site, the existence of a waste oil underground storage tank at the K-Mart, and soil/groundwater contamination from solvent and petroleum-based constituents were noted.

In March 2005, a *Limited Phase II Environmental Site Assessment* was prepared for Harris, Murr & Vermillion, LLC, by S&ME Environmental Services Engineering Testing. Five exploratory borings were advanced and subsurface soil and groundwater samples were collected from each boring. Two of the borings were advanced near the waste oil underground storage tank (UST) used by the former K-Mart while the remaining three borings were advanced near Chinquapin Creek. Subsurface soil and groundwater samples were analyzed for benzene, ethyl-benzene, toluene, xylene, naphthalene, polynuclear aromatic hydrocarbons (PAHs) and a limited suite of metals. PAHs were detected in the samples collected at the UST area in concentrations below their respective EPA Region IX Preliminary Remediation Goal for industrial soil. Barium and selenium were detected in groundwater at concentrations below their respective maximum contaminant level (MCL) as established by the South Carolina State Primary Drinking Water Regulations, R. 61-58.

Carbon disulfide, volatile and semi-volatile organic compounds, and certain metals were detected in the soil samples collected along Chinquapin Creek in concentrations, for some, that exceed their respective PRG for industrial soil. Volatile organic compounds were detected in groundwater in concentrations

that exceed their respective MCLs.

In November 2004, a *Phase I Environmental Assessment* completed by S&ME noted that (1) a UST had been located outside the southwestern corner of the former K-Mart building in the automotive service area; (2) the presence of landfill material on the southern portion of the 18.48 acre tract; and (3) groundwater beneath the former Conoco Store No. 40041 located on the northeastern corner of the 18.48 acre tract had been adversely impacted by a petroleum release(s). According to the *Groundwater Monitoring Report*, dated March 18, 1999, by Tetra Tech NUS, Inc., the following petroleum constituents were detected in concentrations above their respective MCLs/RBCs: benzene, ethylbenzene, toluene, naphthalene and methyl tertiary butyl ether (MTBE). Groundwater from this location may migrate across the subject Property before encountering Chinquapin Creek.

B. The Property will be redeveloped as a Food Lion® retail grocery store providing approximately 157 parking spaces.

3. The terms and conditions of this Contract apply to and shall inure to the benefit of each signatory and its Non-Responsible Party lenders, parents, subsidiaries, successors and assigns, and upon any successor agency of the State of South Carolina that may have responsibility for and jurisdiction over the subject matter of this Contract.

4. JSI is a South Carolina limited liability corporation whose sole member is O. Johnson Small, II, with its principal place of business located at 207 Whitsett Street, Greenville, South Carolina 29601 (P.O. Box 8897, Greenville, 29604). JSI is a Non-Responsible Party at the Site; it is not a parent, successor, or subsidiary of a Responsible Party at the Site; and it certifies that it is eligible to be a Bona Fide Prospective Purchaser for the Property. JSI has had no previous involvement with the Site, including but not limited to any such activities that may have resulted in any Existing Contamination at the Site.

5. JSI agrees to submit to the Department for review and written approval within thirty (30) days of the execution date of this Contract a Work Plan for the Property that is consistent with the technical intent of the National Contingency Plan. The Work Plan shall be approved in writing by the Department prior to implementation. Except for long term monitoring requirements, if necessary, the Work Plan must be completed and a Certificate of Completion must be issued prior to initiation of construction on the Property. The Work Plan and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in South Carolina and shall set forth methods and schedules for accomplishing the following tasks:

- A. Assess methane in the subsurface and above ground for the entire Property to evaluate potential impacts for the proposed Property development and in accordance with a plan approved by the Department. This plan shall account for weather and other factors affecting landfill gas quantity and quality. A report of this methane assessment shall be submitted and reviewed by the Department. Based on the review, if the Department determines it necessary, JSI will develop and implement a Department approved methane gas management plan for the entire Property to include either a passive venting system or an active gas collection system and routine monitoring for methane. The methane gas management plan shall also include a contingency plan if problems develop with landfill gas management. If the Department disapproves the methane gas management plan and JSI is unwilling or unable to make the changes to the methane gas management plan requested by the Department, JSI or the Department shall have the right to terminate this Agreement by written notice delivered to the other prior to the issuance of a Certificate of Completion which termination shall be effective thirty (30) days after the termination notice unless the parties reach an agreement on the changes to be made to the methane gas management

plan.

- B. Measure soil gas in the footprint of the proposed grocery store building to evaluate potential impacts to indoor air. A passive soil gas screening method may be proposed. An active soil gas survey may be required if the results of the passive screening and the groundwater data indicate that vapors may pose an unacceptable risk to indoor air. If an active soil gas survey is necessary, samples shall be collected and analyzed for site related constituents by appropriate methods capable of detecting soil gas concentrations at screening levels indicative of a 10^{-6} risk for shallow soil gas samples (attenuation factor of 0.1) as identified in Table 2 of EPA OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance). The guidance can be found at the Internet address: <http://www.epa.gov/correctiveaction/eis/vapor.htm>.
- C. Should the Department determine that soil gas concentrations exceed risk based screening levels identified on EPA OSWER Draft Guidance referenced above, JSI shall take reasonable steps to ensure acceptable indoor air quality for the intended use of the Property in accordance with a Department approved sub-slab ventilation plan. Alterations in the design of the building may be required to address indoor air quality. If the Department disapproves the sub-slab ventilation plan and JSI is unwilling or unable to make the changes to the sub-slab ventilation plan requested by the Department, JSI or the Department shall have the right to terminate this Agreement by written notice delivered to the other prior to the issuance of a Certificate of Completion which termination shall be effective thirty (30) days after the termination notice unless the parties reach an agreement on the changes to be made to the sub-slab ventilation plan.

- D. Assess groundwater quality across the Property, specifically at the hydraulically upgradient and downgradient Property boundaries to determine the nature and the lateral and vertical extent of contamination. A field screening method using colorimetric gas detector tubes may be utilized to document groundwater quality. A minimum of six (6) sampling locations should be proposed for vertical profiling. Three groundwater samples should be collected at each location to include one sample from the top of the watertable, one intermediate level sample and one sample at the top of bedrock. These groundwater samples should be screened for the known/potential contaminants: chlorinated solvents, methane and the petroleum constituents: benzene, toluene, ethylbenzene, xylenes (BTEX) and naphthalene. Based on the results of the field screening data, a minimum of three (3) groundwater monitoring wells should be proposed. Groundwater samples from these locations must be analyzed for the Target Analyte List/Target Compound List (TAL/TCL) parameters. Metals analysis must be for totals.
- E. Groundwater quality results shall be compared to standards set forth in the South Carolina State Primary Drinking Water Regulations, R. 61-58 or if not specified in R. 61-58, to the United States Environmental Protection Agency (EPA) Region IX Preliminary Remediation goals for Tap Water.
- F. Develop and submit to the Department an approvable foundation design plan. JSI shall include its final development plan for this Property in the foundation design plan. The foundation design plan shall include an analysis of the corrosive nature of the landfill waste on any and all foundation materials and the precautions to be taken if foundation pilings penetrate the landfill's soil cap and disturb landfill waste. If the Department disapproves the foundation design plan and JSI is unwilling or unable to make the changes to the foundation design plan requested by the Department, JSI or

the Department shall have the right to terminate this Agreement by written notice delivered to the other prior to the issuance of a Certificate of Completion which termination shall be effective thirty (30) days after the termination notice unless the parties reach an agreement on the changes to be made to the foundation design plan.

- G. Develop and submit to the Department an approvable excavation management plan for managing any waste encountered during redevelopment and provide for the proper closure of the excavation area. If the Department disapproves the excavation management plan and JSI is unwilling or unable to make the changes to the excavation management plan requested by the Department, JSI or the Department shall have the right to terminate this Agreement by written notice delivered to the other prior to the issuance of a Certificate of Completion which termination shall be effective thirty (30) days after the termination notice unless the parties reach an agreement on the changes to be made to the excavation management plan.
- H. Properly handle, transport, and dispose of all investigation-derived waste in accordance with all applicable state and federal regulations.
- I. Develop and submit to the Department an approvable Quality Assurance/Quality Control (QA/QC) Plan for inspection of and maintenance of the integrity of the landfill “cap”, which is the building and asphalt parking, for the life of the development. The QA/QC plan should include, at a minimum, plans for routine inspection and maintenance of the cap in a timely manner to prevent leachate seeps, a breach of the cap, and/or exposed landfill waste. If the Department disapproves the (QA/QC) plan and JSI is unwilling or unable to make the changes to the (QA/QC) plan requested by the Department, JSI or the Department shall have the right to terminate this Agreement by written notice delivered to the other prior to the issuance of a

Certificate of Completion which termination shall be effective thirty (30) days after the termination notice unless the parties reach an agreement on the changes to be made to the (QA/QC) plan.

- J. Submit maps depicting the locations of the borings advanced during the four (4) geotechnical investigations conducted across the 18.48-acre Former K-Mart Shopping Center along with the boring logs/results; and more specifically submit a map depicting the geotechnical boring locations, boring logs and information gathered from the Property in the vicinity of the proposed Food Lion® building.

6. The Work Plan shall include the names, addresses, and telephone numbers of the consulting firm, the South Carolina certified analytical laboratory, and JSI's contact person for matters relating to this Contract. JSI will notify the Department in writing of changes in the contractor or laboratory. Attached to the Work Plan but under separate cover shall also be a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. The Department will review the Work Plan and will notify JSI in writing of any deficiencies in the Work Plan, and JSI shall respond in writing within thirty (30) days to the Department's comments.

7. Within thirty (30) days of Work Plan approval and once a month thereafter until the Certificate of Completion is issued, JSI shall submit to the Department's project manager a written progress report that must include the following: (a) actions taken under this Contract during the previous reporting period; (b) actions scheduled to be taken in the next reporting period; (c) sampling, test results, and any other data, in summary form, generated during the previous reporting period, whether generated pursuant to this Contract or not; and (d) a description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

8. As provided for by S.C. Code Ann. § 44-56-200 and S.C. Code Ann. § 44-56-750 (D)

(2002), JSI shall, on a quarterly basis until the Certificate of Completion has been issued, reimburse the Department for reasonable oversight costs of activities required under this Contract. Oversight costs include but are not limited to the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work, and public participation. Payments will be due within thirty (30) days of receipt of the Department's invoice. After the issuance of the Certificate of Completion, JSI will only be responsible for oversight costs associated with this Contract and Certificate of Completion.

9. Two (2) years after the execution date of this Contract, JSI shall provide the Department with the following information concerning the new operation at the Property: the number of jobs created; the amount of increase to the tax base; the amount of soil removed or remediated, if necessary; cost of all environmental work; total investment in the site; and any other information that demonstrates that the activities performed pursuant to this Contract have been beneficial to the State, the community, and the Department.

10. Subject to the provisions of Paragraph 18 of this Contract, nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, that the Department may have against any person, firm, corporation, potentially responsible party, or other entity not a signatory of this Contract.

11. Nothing in this Contract is intended to limit the right of the Department to undertake future response actions at the Site or to seek to compel parties other than JSI to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law. JSI acknowledges that it is acquiring property where response actions may be required.

12. Upon written notification to the Department, the rights and obligations of this

Contract shall be assignable to a new purchaser, lessee, parent, subsidiary, or successor, but only to the extent that the new purchaser, lessee, parent, subsidiary, or successor has never been a Responsible Party at the Site. In the event a new purchaser who is not a Responsible Party accepts in writing an assignment of the rights and obligations of this Contract, JSI shall be released from its obligations under this Contract from and after the effective date of the written assignment, but shall not be relieved of its obligations under this Contract prior to the effective date of the written assignment. In all other instances of a permitted assignment, JSI, along with the permitted assignee, shall remain bound to the rights, obligations and protections of this Contract.

13. The Department, its authorized officers, employees, representatives, and all other persons performing response actions will not be denied access to the Property during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). JSI shall ensure that a copy of this Contract is provided to any current lessee or sublessee on the Property as of the execution date of this Contract. JSI shall also ensure that any subsequent leases, subleases, assignments or transfers of the Property occurring during JSI's ownership of the Property are consistent with this Paragraph.

14. JSI shall preserve all drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site that may provide environmental information, evidence of a Potentially Responsible Party's involvement at the Site, or may lead to the discovery of other areas of contamination at the Site. Prior to destruction of any such items, JSI shall notify the Department of their location and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense.

15. JSI shall inform the Department at least five (5) working days in advance of all field activities pursuant to this Contract and shall allow the Department and its authorized representatives, if so desired, to take duplicates of any samples collected by JSI pursuant to this Contract.

16. The Department and JSI recognize that public participation is an important component of the Voluntary Cleanup Contract in order to further public acceptance of the project. The Department and JSI will undertake necessary steps to foster opportunities for the public to be aware of the project. Specific functions of each signatory party to the Contract are as follows:

- A. The Department will seek public comment in accordance with S.C. Code Ann. § 44-56-750 (2002) as outlined below:
 - a. Upon signature of this Contract by JSI, the Department will provide notice for public participation by placing announcements describing the proposed Contract in newspaper(s) of general circulation within the affected community. A thirty-day (30) period following the publication date of the announcement(s) will be provided for public comment and will precede the Department's scheduled date for execution of the Contract.
 - b. The Department may publicize the proposed Contract by any other means including, but not limited to, electronic mail, news releases, community flyers, and door-to-door canvassing. Such actions may be done solely at the Department's discretion.
 - c. A public informational meeting will be held if requested by twelve (12) residents of South Carolina or an organization representing twelve (12) or more residents of South Carolina. At the Department's discretion, public informational meetings may be held in the nearby communities for any other reason prior to the Department executing the contract. A public meeting may be requested at any time during

the thirty-day (30) comment period. In the event that a public meeting is deemed necessary, the Department will provide at least two (2) weeks advance notice of the meeting to the public and will extend the public comment period at least through the end of the day following the public meeting. The Department will not execute the contract during any public comment period. In addition, the Department may, at its discretion, conduct public meetings to inform the community about the Site at any time after the contract is executed until the Certificate of Completion is issued.

- B. JSI agrees to enhance the public knowledge of the site response activities by:
- a. Erecting a sign(s) at the entrance onto the reference Property from any public road, thoroughfare, navigable waterway, or other location routinely accessible by the public. The sign(s) shall be erected not later than one (1) day after publication of any public announcement about the Site placed by the Department in any newspaper of general circulation in the community.
 - b. The sign will state “Voluntary Cleanup Project by JSI under Voluntary Cleanup Contract (VCC 06-5623) with the South Carolina Department of Health and Environmental Control.” The sign shall provide a brief description of the scope of activities under the NRP contract and contact information for a representative of JSI and the Department. All required lettering on the sign must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the Site without intruding onto the subject property.
 - c. Within 10 (ten) days after erecting the sign, JSI shall furnish to the Department photographs of the sign along with a Property location drawing showing the sign location(s). Photograph(s) of the sign(s) shall be taken from no closer than the edge of the publicly-accessible road, waterway, etc. and should include an appropriately sized scale reference so that Department may determine the size of the sign and

effectiveness of the lettering. JSI agrees to revise the sign if the Department determines the sign is not legible.

- d. JSI must maintain the sign(s) in legible conditions and visible locations throughout the duration of the contract until a Certificate of Completion is issued on the Property.
- e. In the event that any sign must be removed to accommodate building or grading activities, JSI shall replace the sign within two (2) days. If the sign cannot be restored to the original location, JSI may relocate it to another location meeting the conditions specified above.

- C. All costs incurred by the Department for public participation [e.g., public notice(s), building and equipment rental(s) for public meetings, etc.] will be paid by JSI as part of the oversight costs addressed in Section 8 hereof.

17. The Department and JSI agree that the following are entitled to protection from contribution claims as provided by CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2), S.C. Code Ann. § 44-56-200 and S.C. Code Ann. § 44-56-750 (2002): JSI, its Non-Responsible Party lenders, parents, subsidiaries, and successors. A thirty (30) day comment period for contribution protection commences upon notice of this Contract to Responsible Parties at the Site as identified by the Department through a reasonable search effort.

18. The Department and JSI agree that the following are entitled to protection from third-party claims for equitable relief or damages relating to "existing contamination" at the Site, as provided by S.C. Code Ann. § 44-56-750 (2005): JSI, its Non-Responsible Party lenders, signatories, parents, subsidiaries, and successors. This limitation on liability does not apply to any contamination caused by JSI or its lenders, signatories, parents, subsidiaries, or successors. Furthermore, this limitation of liability is effective on the date this contract is executed by the Department, but will be automatically withdrawn if this Contract is lawfully terminated by either party.

19. Upon successful completion of the terms of this Contract as referenced in Paragraph 5 above, JSI shall submit to the Department a written notice of completion. Once the Department acknowledges satisfactory completion of the Contract terms, except in the case of long-term monitoring, the Department, under its authority to enforce CERCLA, 42 U.S.C. §§ 9601, et seq., pursuant to the HWMA, S.C. Code Ann. § 44-56-200, will give JSI a Certificate of Completion that provides a covenant not to sue JSI, its Non-Responsible Party lenders, parents, subsidiaries, and successors for Existing Contamination at the Property, except for releases and consequences that JSI causes. In consideration of this liability protection from the Department, JSI agrees not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

20. If Hazardous Substances in excess of residential standards exist at the Property after JSI has completed the actions required under Section 5 of this Contract, reasonable land use restrictions shall be defined in the Certificate of Completion and the Department shall enter into a restrictive covenant with JSI defining those restrictions. Upon the Department's approval of the restrictions outlined therein, the restrictive covenant shall be signed by the Department and representatives of JSI and witnessed, signed, and sealed by a notary public. JSI shall file this restrictive covenant with the Register of Mesne Conveyance or Deeds in Spartanburg County. The signed covenant shall be incorporated into this contract as an Appendix. With the approval of both the Department and JSI, the restrictive covenant may be modified in the future if: (a) additional remedial activities are carried out which meet appropriate clean up standards at that time; (b) a significant change in law requiring remediation occurs; or (c) circumstances change such that the restrictive covenant would no longer be applicable.

21. JSI specifically denies any responsibility for response costs or damages resulting from Existing Contamination and does not, by signing this Contract, waive any rights that it

may have to assert any claims in law or equity against any other person, company, or entity with respect to the Site. However, JSI is responsible and liable for any and all contamination it causes or contributes to the Site. Should environmental contamination neither previously-identified nor identified during the performance of response actions required under this Contract be discovered at the Site after the execution date of the Certificate of Completion, the burden is on JSI to demonstrate to the Department's satisfaction that the contamination was not caused by JSI.

22. JSI and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should JSI elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that no environmental or physical hazards exist at the Site as a result of JSI's actions. The Department may terminate this Contract only for cause, which may include but is not limited to the following: (a) events or circumstances at the Property that are inconsistent with the terms and conditions of this Contract; (b) failure to complete the terms of this Contract; or (c) additional contamination of the Site caused by JSI.

23. If JSI provides the Department with false or incomplete information, or if JSI's business activities on the Property or use of the Property change such that they are inconsistent with the terms and conditions of this Contract, then the releases/contribution protection extended to JSI, its Non-Responsible Party lenders, parents, subsidiaries, and successors, shall become null and void.

24. JSI acknowledges that the Department will not grant or will revoke liability protection if JSI acquires the Contract or a Certificate of Completion by fraud, intentional misrepresentation, knowing failure to disclose material information, or failure to satisfactorily complete the approved Work Plan or terms of this Contract.

25. All correspondence which may or are required or permitted to be given by either party to the other hereunder shall be in writing and deemed sufficiently given if delivered by (i) regular U.S. mail, (ii) certified or registered mail, postage prepaid, return receipt requested, (iii) by nationally recognized overnight delivery service company or (iv) by telephone facsimile addressed to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing.

The Department (including two (2) copies of all work plans and reports, except for one (1) copy of the Health and Safety Plan):

Jo Cherie Overcash, Hydrogeologist
Brownfields/Voluntary Cleanup Program
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

JSI Spartanburg, LLC
Attn: Mr. O. Johnson Small, II
P. O. Box 8897
Greenville, South Carolina 29604

Any notice given hereunder shall be deemed delivered when, if sent by mail, the return receipt is signed or refusal to accept the notice is noted thereon or, if sent by recognized overnight courier when the notice is actually delivered or refused as reflected in the courier company's delivery records or if sent via facsimile upon receipt of confirmation by the sender that the facsimile has been received.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND
ENVIRONMENTAL CONTROL**

BY: _____
Robert W. King, Jr., P.E.
Deputy Commissioner
Environmental Quality Control

DATE: _____
Columbia, South Carolina

Patrick T. (Pat) Walker, Chief
Bureau of Land and Waste Management

DATE: _____

Approved by Legal Office

DATE: _____

JSI SPARTANBURG, LLC

Signature

DATE: _____

Printed Name and Title

APPENDIX A

LEGAL DESCRIPTION

All that certain piece, parcel, or tract of land situate, lying and being on the western side of Garner Road in the County of Spartanburg, State of South Carolina, containing 3.54 acres, more or less, and having the following metes and bounds to wit:

Beginning at an iron pin on the western right of way of Garner Road, said iron pin being 535.24 feet north of the intersection of the northern right of way of Pine Street and the western right of way of Garner Road, thence leaving said right of way of Garner Road and running N 69-22-21 W 312.33 feet to a point, thence turning and running N 20-37-39 E 47.25 feet to a point, thence turning and running N 69-22-21 W 254.28 feet to a point on the common line now or formerly of Hasco Company, thence turning and running with said common line N 19-41-47 E 364.54 feet to a point, thence leaving said common line and turning and running S 69-22-21 E 155.04 feet to a point, thence turning and running S 20-37-39 W 161.37 feet to a point, thence turning and running S 69-22-21 E 82.47 feet to a point, thence turning and running N 20-37-39 E 2.87 feet to a point, thence turning and running S 69-22-21 E 41.15 feet to a point, thence turning and running N 20-37-39 E 45.80 feet to a point, thence turning and running S 69-22-21 E 150.01 feet to a point; thence turning and running S 02-49-41 E 57.66 feet to a point; thence turning and running S 20-37-39 W 68.42 feet to a point; thence turning and running S 69-22-21 E 120.91 feet to a point on the western right of way of Garner Road, thence turning and running along the western right of way of Garner Road S 20-37-39 W 177.74 feet to the Point of Beginning.